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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Application of AT&T Corp. and	)	CC Docket No. 98-24
Teleport Communications Group, Inc.	)	
for Transfer of Control	)	

REPLY COMMENTS OF AMERITECH

Ameritech Corporation ("Ameritech"), pursuant to the Commission's Public Notice DA 98-558 (rel. March 24, 1998), hereby submits its Reply Comments regarding the proposed acquisition by AT&T Corp. ("AT&T") of Teleport Communications Group, Inc. ("TCG"). Ameritech's concerns regarding the proposed acquisition are similar to those raised by Sprint regarding potential adverse effects on the competitive access market. Ameritech wishes to elaborate on and discuss a prime example of these potential adverse effects. (See Petition of Sprint for Investigation and Other Relief, pp. 3-6.) In particular, Ameritech is concerned that an AT&T-TCG alliance would exacerbate the anticompetitive and exclusionary effect of AT&T's current policy regarding interconnection by other carriers at AT&T's central offices ("points-of-presence" or "POPs") and furnish AT&T with further incentive to engage in discriminatory and unreasonable practices when providing such interconnection to competing service providers. Accordingly, Ameritech requests that the Commission take steps to eliminate or minimize the potential anticompetitive effects of the proposed acquisition either before or as a condition of approving the acquisition.

BACKGROUND

At least one state commission (the Illinois Commerce Commission ("ICC")) has already found that AT&T's policy regarding interconnection at AT&T's POPs by competing providers of dedicated access services is anticompetitive and discriminatory. That proceeding involved a complaint brought by Ameritech's Bell operating company ("BOC") subsidiary, Ameritech Illinois, against AT&T regarding AT&T's interconnection policy for what AT&T calls "Shared Customer-Provided Access" (the "SCPA policy"). In a nutshell, AT&T's SCPA policy requires competing providers of dedicated access services, such as Ameritech Illinois, to interconnect with AT&T by bifurcating their own networks and installing two separate, redundant sets of equipment in two different collocation spaces in AT&T's POPs. One set of equipment may be used only for interconnecting dedicated access service provided to AT&T, while the second set of equipment must be used for interconnecting all dedicated access service provided to any customers other than AT&T (e.g., end-user customers who want to use Ameritech Illinois for dedicated access service but need to connect to the AT&T POP because AT&T is their interexchange carrier ("IXC")). This arrangement is diagrammed in the attached Exhibit 1. The SCPA interconnection policy, first imposed by AT&T in 1994, represents a stark departure from AT&T's interconnection practice since divestiture, during which time it had allowed competing providers of dedicated access service to interconnect to AT&T using a single collocation space and a common set of equipment at a POP for all dedicated access services, regardless of whether they were provided to AT&T or to an end-user customer.

As a competitor of AT&T in the dedicated access market, Ameritech Illinois found that AT&T's SCPA policy needlessly increased its costs of service (by requiring the installation of unnecessary, duplicate equipment to serve customers other than AT&T), required it to configure its network in an inefficient manner for no technical or operational reason, and forced it to risk stranding capacity on equipment it had installed at the AT&T POPs. Ameritech Illinois was also disturbed because AT&T is the only IXC who requires such bifurcated interconnection arrangements. Accordingly, Ameritech Illinois filed a complaint with the ICC to force AT&T to rescind its SCPA policy.

After conducting a full proceeding, including prefiled testimony and an evidentiary hearing, the ICC agreed with Ameritech Illinois:

> AT&T's SCPA policy is unnecessary, anticompetitive, and discriminatory, and violates Section 13-514 of the [Illinois Public Utilities Act]. As described in the testimony of Ameritech and Staff, there is no engineering or operational basis for the SCPA policy. Moreover, it is clear that the SCPA policy has several anticompetitive effects, including unnecessarily increasing competitors' costs of service, decreasing competitors' network efficiencies and economies of scale, increasing the risk that competitors will be left with stranded capacity in AT&T POPs, and making it much more difficult for competitors to service their dedicated access customers in a timely, efficient manner. These effects constitute "per se" impediments to competition under Section 13-514(1), (2), and (6).

Illinois Bell Tel. Co. v. AT&T, Ill. C.C. Docket No. 97-0624, p. 25, 1998 Ill. PUC LEXIS 139, *64 (Feb. 27, 1998). The ICC ordered AT&T to "rescind its current SCPA policy and to allow competitors to interconnect all types of dedicated access traffic over a single collocation and interconnection arrangement in a single location at each AT&T POP, regardless of whether the customer of that service is AT&T or someone else." Id. (emphasis in original). The ICC also ordered AT&T to tariff the rates, terms, and conditions of its revised interconnection policy. Id.

Ameritech Ohio also filed a complaint regarding AT&T's SCPA policy with the Ohio Public Utilities Commission at about the same time as its complaint to the ICC. Subsequent to the ICC decision and prior to the scheduled hearings in Ohio, AT&T settled that case by agreeing to rescind its SCPA policy and tariff a revised policy in Ohio as well as Illinois.

Remarkably, however, the ICC decision and the Ohio settlement have had little impact on AT&T's interconnection practices. Instead AT&T has (1) restricted its revised SCPA policy to the relatively small number of dedicated access circuits that are classified as "intrastate" for separations purposes; (2) declined to tariff or revise its SCPA policy in any state where Ameritech has not instituted formal complaint proceedings; and (3) in Illinois, submitted tariff rates which exceed the price quotes it provided to Ameritech Illinois under its SCPA policy prior to the Illinois complaint proceeding by some 500%. Thus, AT&T seems intent on replacing one unreasonable interconnection policy with another, equally (if not more) unreasonable policy. Moreover, although dual challenges by NYNEX to AT&T's SCPA policy (a Complaint, File No. E-97-01, and a Petition for Declaratory Ruling, CCBPol 95-20) have been pending before this Commission for over two years, AT&T has done nothing to revise its SCPA policy in NYNEX's states or to resolve the problem on a nationwide basis. Indeed, AT&T's recalcitrance and foot-dragging have now forced Ameritech to seek comprehensive relief from this Commission by filing yet another complaint against the SCPA policy (File No. E-98-35).

As described below, AT&T's refusal to rescind its SCPA policy raises serious questions about the effect of the proposed acquisition on competition in the dedicated access market once AT&T absorbs one of the leading competitors in that market.

<u>ARGUMENT</u>.

I. The Proposed Acquisition of TCG Will Exacerbate the Anticompetitive and Anti-Consumer Effects of AT&T's SCPA Policy and Eliminate Any Incentive for AT&T to Provide Interconnection to Competing Access Providers on Reasonable Terms.

AT&T's proposed acquisition of TCG would tie the nation's largest IXC to the nation's largest and most ubiquitous competitive access provider ("CAP"). As a result, AT&T would dramatically increase its ability to provide dedicated access services to itself over its own facilities (rather than buying service from BOCs or CAPs) and enhance its incentive to discriminate against other dedicated access service providers. These facts raise grave concerns regarding the public interest and the likely effect of the proposed acquisition on competition in the dedicated access services market.

<u>First</u>, as AT&T's ability to self-provide its own access (via TCG's facilities) and to compete in the dedicated access market increases, so too will AT&T's incentive to impede competition by other providers. This is especially true because the proposed acquisition would eliminate one of the leading national competitors in that market, TCG. AT&T's main tool to impede such competition so far has been its SCPA policy. Without Commission action to rein in AT&T, it is likely that the proposed acquisition would only stimulate AT&T's unlawful use of its SCPA interconnection policy, thus exacerbating what the ICC found to be the anticompetitive, exclusionary, and efficiency-reducing effects of that policy.

<u>Second</u>, as Sprint points out (Sprint Pet., pp. 4-5), a vertically-integrated carrier (which AT&T/TCG would be) has no incentive to maintain reasonable prices for the services it supplies to competitors. Although Sprint addresses this issue in the context of AT&T keeping TCG's access prices artificially high, a similar danger exists regarding interconnection by competing carriers at

AT&T's POPs. AT&T obviously controls access to its POPs and, at present, unilaterally establishes its own terms and policies for interconnection at those POPs. Further, AT&T is the leading IXC in terms of market share, meaning that competing providers of dedicated access services invariably must make arrangements to interconnect with AT&T. As long as it can obtain all the access service it needs directly from TCG, however, AT&T will have an even greater incentive — and ability — to engage in discriminatory and unreasonable conduct against other carriers seeking to interconnect with AT&T at its POPs. This is because AT&T will undoubtedly attempt to maximize its return on its investment in TCG. One way for AT&T to do that, of course, is to inflate its interconnection prices charged to other, competing access providers, thereby increasing those competitors' cost inputs.

Third, the proposed acquisition would extend AT&T's advantage as a "one-stop" service provider, with no offsetting guarantee that AT&T will give its competitors nondiscriminatory interconnection at its POPs. By acquiring TCG, AT&T will enhance its ability to provide service bundles of dedicated access, interexchange, local and other services. Indeed, because TCG is a facilities-based carrier, the proposed acquisition would allow AT&T to avoid the restriction in 47 U.S.C. § 271(e)(1) that currently prohibits it from bundling its interLATA service with resold local exchange service. Ameritech and the other BOCs, by contrast, cannot at present offer interLATA services in their in-region states, and therefore cannot offer similar bundles to end-user customers, including those customers selecting a dedicated access provider. To ensure at least some level of competition in the dedicated access market, then, BOCs and CAPs must at a minimum be able to interconnect at AT&T's POPs on reasonable and nondiscriminatory terms and conditions. This is especially important given that, under the Commission's current pricing rules, BOCs and CAPs cannot vary their dedicated access rates depending on the IXC to which they are interconnecting. In other words, AT&T can use its SCPA policy to impose exorbitant interconnection charges on dedicated access providers, but those providers cannot recover those charges from customers who connect to AT&T for interLATA service; rather, the charges must be spread among all the competitor's customers. This puts the BOCs at a double disadvantage: they cannot offer the same service bundles as AT&T, yet, at the same time, AT&T can use its SCPA policy to impose on the BOCs higher costs of service in one of the service markets where they do compete with AT&T.

II. The Commission Should Protect the Public Interest By Requiring AT&T to Adopt a Reasonable, Nondiscriminatory Policy for Interconnection as its POPs.

Although it is clear that the proposed acquisition presents enhanced risks of anticompetitive behavior by AT&T and resulting harm to consumers, the Commission can minimize those risks fairly simply. Moreover, action by the Commission here will have the added benefit of saving BOCs (and state commissions) the time and expense of litigating against AT&T's nationwide SCPA policy in multiple states in order to obtain even incremental relief against AT&T. Thus, the Commission could eradicate the anticompetitive effects of AT&T's SCPA policy efficiently and in advance of AT&T obtaining the ability to further exploit that policy by acquiring TCG.

One solution would be to grant the relief requested by NYNEX and the Ameritech BOCs in their pending proceedings before the Commission against AT&T's SCPA policy, and to do so prior to approving the proposed acquisition. A second option would be to condition the Commission's consent to the proposed acquisition on AT&T's agreeing not to charge competing carriers rates for interconnection at AT&T POPs that are any greater than the appropriate costs AT&T incurs in providing such interconnection to TCG. To ensure compliance with such a condition, the Commission could order AT&T to submit a cost study and proposed rates for such interconnection to the Commission and to subject that study and proposed rates to public comment.

CONCLUSION

Ameritech concurs with Sprint and urges the Commission to use this proceeding to remove the anticompetitive effects of AT&T's SCPA policy by granting the relief requested herein.

Respectfully submitted,

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Dated: April 27, 1998
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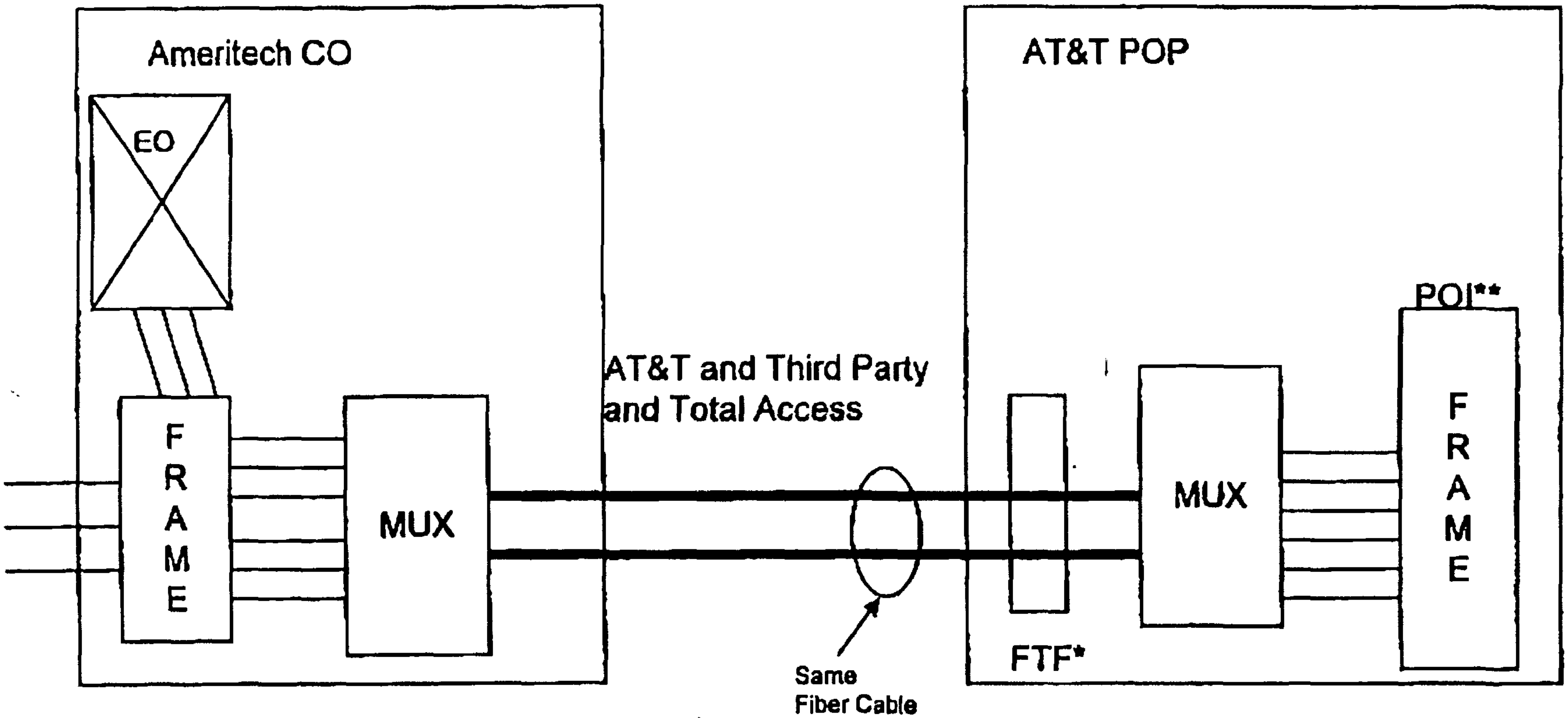
EXHIBIT 1

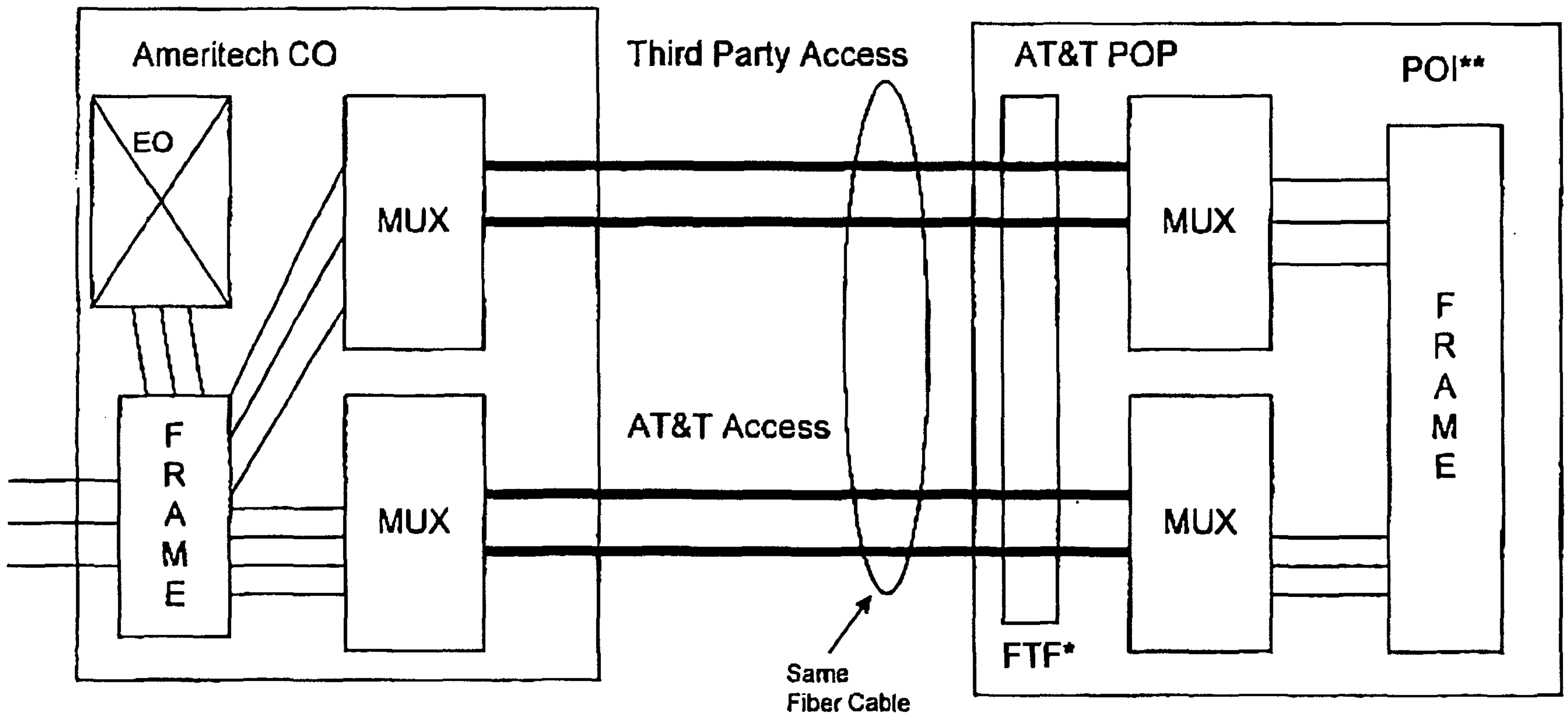
Existing Equipment Arrangement
Ameritech SWC to AT&T POP



Single Pair of Fibers and Single Set of Multiplexers can be used to deliver service.
Efficient network interconnection.
All access services are delivered using an integrated network.

*Fiber Termination Frame
**Point of Interconnection

AT&T SCPA Policy Arrangement
Ameritech SWC to AT&T POP



Requires separate pair of fibers and multiplexing equipment to provide services.
Requires additional, redundant network infrastructure.
Strands capacity on existing network infrastructure

*Fiber Termination Frame
**Point of Interconnection

CERTIFICATE OF SERVICE

I, Artie King, a secretary at the law firm of Mayer, Brown & Platt, do hereby certify that I have caused a true copy of the foregoing "Reply Comments of Ameritech" to be delivered by hand on the 27th day of April, 1998 to the following:

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